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TREASURY:ASIA:MR. CANNER (DRAFT)

COMMERCE: OITP/DND:RMKLEIN (SUB.)

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FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

CINCPAC HONOLULU HI IMMEDIATE

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LIMDIS////////////////////////////////////

E.O. 11652: GDS

TAGS: OVIP, EGEN, US, RP

SUBJECT:SECRETARY SHULTZ TRAVEL - PHILIPPINE BRIEFING

REF: MANILA 4295

CINCPAC ALSO FOR POLAD

CINCPAC PASS ASSISTANT SECRETARY HENNESSY

1. FOLLOWING IS UPDATE OF BRIEFING PAPERS ON PHILIPPINES
PROVIDED EARLIER, WITH PARTICULAR REFERENCE TO QUESTIONS
FROM ASSISTANT SECRETARY HENNESSY RELAYED BY TREASURY.
REQUEST EMBASSY CABLE VIA CINCPAC ANY ADDITIONAL COMMENTS.
HOWEVER, IN VIEW RAPIDLY MOVING AND HIGHLY SENSITIVE DIS-
CUSSIONS WHICH HAVE CHARACTERIZED PAST FEW WEEKS IN U.S.-

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PHILIPPINE ECONOMIC NEGOTIATIONS, BELIEVE SECRETARY WILL

WISH TO-DISCUSS WITH CHARGE THE LATEST STATE OF DEVELOPMENTS BEFORE MEETING WITH PHILIPPINE OFFICIALS OR U.S. BUSINESSMEN.

A. BACKGROUND

2. DURING PAST TWO WEEKS, EXTENSIVE CONFIDENTIAL DISCUSSIONS HAVE TAKEN PLACE BETWEEN AMBASSADOR AND PRESIDENT MARCOS, AND THEIR ADVISERS, AND BETWEEN PHILIPPINE OFFICIALS AND AMERICAN BUSINESS REPRESENTATIVES, CONCERNING TRANSITIONAL PROBLEMS FACING AMERICAN INVESTORS WITH

EXPIRATION JULY 3 OF PRIVILEGES PROVIDED BY LAUREL-LANGLEY AGREEMENT AND PARITY AMENDMENT TO PHILIPPINE CONSTITUTION. THESE PROBLEMS, AS IDENTIFIED BY THE AMERICAN CHAMBER OF COMMERCE OF PHILIPPINES IN A PAPER PRESENTED TO USG LAST DECEMBER, WERE:

(A) PROHIBITION OF ANY FOREIGN PARTICIPATION IN RETAIL TRADE, WITH SUCH TRADE SO LOOSELY DEFINED THAT IT COULD APPLY TO BULK SALES OF FUEL AND SALES OF INDUSTRIAL EQUIPMENT TO END USERS. CHAMBER SOUGHT BETTER DEFINITION OF RETAIL TRADE TO PERMIT SUCH SALES.

(B) PROHIBITION OF LANDOWNERSHIP BY FOREIGNERS OR BY COMPANIES IN WHICH FOREIGNERS OWN MORE THAN 40 PER CENT OF EQUITY SHARES. CHAMBER SOUGHT CONTINUED VALIDITY OF LAND TITLES ACQUIRED BEFORE JULY 3, 1974.

(C) PHILIPPINE COURT RULINGS AND ADMINISTRATIVE DECISIONS WHICH HAVE THREATENED TO INVALIDATE LEASES OF LAND AND FORESHORE AREAS HELD BY U.S. COMPANIES. CHAMBER URGED THAT SUCH LEASES BE ALLOWED TO RUN FULL COURSE, WITH RENEWAL RIGHTS.

(D) UNCERTAINTIES CAUSED, INTER ALIA, BY THE "ANTI-DUMMY" LAW AND SOME COURT RULINGS, CONCERNING LEGALITY OF NON-FILIPINOS SERVING ON CORPORATE BOARDS OF DIRECTORS AND AS EMPLOYEES OF "FILIPINIZED" FIRMS. CHAMBER SOUGHT PROPORTIONAL REPRESENTATION OF INVESTORS ON BOARDS, AND RIGHT TO HIRE MANAGERS, ENTER SERVICE CONTRACTS, REGARDLESS

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OF NATIONALITIES.

(E) DIFFICULTIES ENCOUNTERED IN OBTAINING TREATY TRADER-INVESTOR VISAS DESPITE PROVISIONS OF U.S.-PHILIPPINE EXCHANGE OF NOTES OF SEPTEMBER 6, 1955 CONCERNING VISA MATTERS. CHAMBER SOUGHT REAFFIRMATION OF 1955 EXCHANGE OF NOTES.

(F) CONCERN FOR POSSIBLE FUTURE "FILIPINIAN" LAWS THAT COULD AFFECT COMPANIES ALREADY ESTABLISHED. CHAMBER SOUGHT GUARANTEE THAT SUCH NEW LIMITATIONS WOULD NOT BE APPLIED TO COMPANIES ALREADY DOING BUSINESS IN PHILIPPINES.

BUSINESS REPS HAVE ALSO URGED FAVORABLE ACTION BY USG ON PHILIPPINE TRADE REQUESTS TO FACILITATE PHILIPPINE ACCOMMODATION OF U.S. INVESTOR INTERESTS IN CURRENT TREATY NEGOTIATIONS, AND TO ENCOURAGE GENERALLY FAVORABLE INVESTMENT CLIMATE IN PHILIPPINES.

3. PHILIPPINE GOVERNMENT HAS PROPOSED OR IS CONSIDERING AMENDMENTS TO EXISTING LEGISLATION AFFECTING RETAIL TRADE,

LAND AND FORESHORE LEASES, AND CORPORATE BOARD MEMBERSHIP. FULL DETAILS NOT AVAILABLE, BUT SOLUTIONS MAY BE IN SIGHT ON THESE ISSUES. PROHIBITION OF FOREIGN LAND OWNERSHIP STILL UNRESOLVED, BUT AGREEMENT APPEARS TO HAVE BEEN REACHED IN PRINCIPLE FOR PHILIPPINE GOVERNMENT TO REFRAIN FROM ACTION ON TITLES WHILE NEGOTIATIONS PENDING (ALTHOUGH EVEN TERMS OF SUCH AGREEMENT "IN PRINCIPLE" ARE STILL UNDER DISCUSSION). VISAS AND POSSIBLE NEW LIMITATIONS APPEAR LIKELY SUBJECTS TO BE DEALT WITH IN NEGOTIATIONS ON TREATY OF AMITY AND ECONOMIC RELATIONS (AER). A PHILIPPINE DRAFT TREATY, IN RESPONSE TO U.S. DRAFT PRESENTED LAST SEPTEMBER, ALSO RECEIVED APRIL 5 AND NOW UNDER STUDY BY USG.

4. NO QUESTIONS YET FULLY SETTLED, AND WE REMAIN FAR APART ON MANY ISSUES. PHILIPPINE AER DRAFT REVEALS WIDE DIFFERENCES ON KEY ISSUES (E.G. PHIL REQUEST FOR BILATERAL TARIFF PREFERENCES AND ABSENCE OF PROVISIONS OFFERING CLEAR PROTECTION TO U.S. INVESTORS). AGREEMENT ON TREATY BY JULY 3 APPEARS UNLIKELY, PARTLY BECAUSE OF SUBSTANTIVE DIFFERENCES IN DRAFTS AND PARTLY BECAUSE USG LACKS LEGIS-
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LATIVE AUTHORITY AT PRESENT TO ACCOMMODATE PHILIPPINE TRADE INTERESTS -- SUGAR QUOTA AND TARIFF REDUCTIONS IN PARTICULAR. HOWEVER, WE HAVE BEEN IMPRESSED BY PHILIPPINE EFFORTS TO FIND PRACTICAL SOLUTIONS TO MANY TRANSITIONAL PROBLEMS OF AMERICAN BUSINESS, AND BY MEASURES OF PAST YEAR AND A HALF TO EASE RESTRICTIONS ON FOREIGN BUSINESS AND DEVELOP FAVORABLE INVESTMENT CLIMATE.

5. IN THIS CONNECTION SHOULD BE NOTED WE KNOW OF NO MAJOR DISINVESTMENT BY U.S. FIRMS OCCASIONED BY LAUREL-LANGLEY EXPIRATION, AND SEVERAL AMERICAN COMPANIES HAVE INAUGURATED OR INCREASED INVESTMENT IN PHILIPPINES IN PAST YEAR. SOME COMPANIES, ESPECIALLY MINING FIRMS, ARE REPORTEDLY ADJUSTING EQUITY SHARES TO MEET PHILIPPINE LAND OWNERSHIP REQUIREMENTS. OTHERS HAVE CONTINGENCY PLANS FOR THIS OR

OTHER ACTIONS (E.G. TRANSFER OF LAND TO EMPLOYEE PENSION FUNDS, ETC.) TO COMPLY WITH RESTRICTIONS THAT WILL APPLY JULY 3, BUT MOST APPEAR TO BE AWAITING OUTCOME OF CURRENT TALKS BEFORE ACTING. WE HOPE THAT AT LEAST PRINCIPAL TRANSITIONAL PROBLEMS CAN BE RESOLVED BY JULY 3, AND WHILE U.S. FIRMS WILL HAVE TO MAKE SOME ADJUSTMENTS, WE CONTINUE TO BELIEVE THAT WITH OR WITHOUT FORMAL AGREEMENT PHILIPPINE INTEREST IN RETAINING AND ATTRACTING FOREIGN INVESTMENT WILL PROVIDE BEST ASSURANCE AGAINST DRASTIC CHANGE IN TREATMENT ACCORDED U.S. BUSINESS IN PHILIPPINES.

B. SUGGESTED TALKING POINTS

6. WE EXPECT PRESIDENT MARCOS WILL BE INTERESTED IN SECRETARY SHULTZ' ASSESSMENT OF U.S. AND WORLD ECONOMIC

PROSPECTS FOR COMING YEAR OR LONGER PERIOD. RE BILATERAL ISSUES, SECRETARY COULD NOTE IMPORTANCE WE ATTACH TO SATISFACTORY RESOLUTION OF OUTSTANDING PROBLEMS CITED ABOVE, AND COULD CONVEY ENCOURAGEMENT WE FEEL AS RESULT OF RECENT MOVEMENT TOWARD SUCH AN END, PARTICULARLY AS REFLECTED IN PRESIDENT MARCOS' RECENT MEETINGS WITH AMBASSADOR SULLIVAN. WISH, HOWEVER, TO RE-EMPHASIZE DESIRABILITY OF MEETING WITH CHARGE FOR MORE DETAILED DISCUSSION OF STATUS NEGOTIATIONS AND COORDINATION OF ANY U.S. COMMENTS.

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